

No. 9/5/84-6 Lab-/4138.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of (i) General Manager, Haryana Roadways, Rohtak, (ii) State Transport Controller, Haryana, Chandigarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 159 of 1984

between

SHRI ASHOK KUMAR, WORKMAN AND THE MANAGEMENT OF (I) GENERAL MANAGER, HARYANA ROADWAYS, ROHTAK, (ii) STATE TRANSPORT CONTROLLER, HARYANA, CHANDIGARH

Present :—

Shri S.N. Vats, A. R. for the workman.

Shri S. C. Singla, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Ashok Kumar and the management of (i) General Manager, Haryana Roadways, Rohtak, (ii) State Transport Controller, Haryana, Chandigarh, to this Court, for adjudication,—vide Labour Department Gazette Notification No. 32863-69, dated 30th August, 1984 :—

Whether the termination of services of Shri Ashok Kumar is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed initially on 12th November, 1981 as a Sweeper and thereafter he was employed as Helper with effect from 9th November, 1982 and that his services were terminated by the respondent unlawfully on 31st October, 1983 without payment of any retrenchment compensation or one month's prior notice as envisaged under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, the claim of the workman has been controverted. It is alleged that the applicant never worked with the respondent from 1st March, 1982 to 9th November, 1982 but it is admitted that he was appointed as Helper with effect from 10th November, 1982 on *ad hoc* basis for a period of one month and thereafter he continued to be employed from 11th December, 1982 to 10th January, 1983, 12th January, 1983 to 11th February, 1983, 14th February, 1983 to 13th March, 1983 and 1st June, 1983 to 31st October, 1983. It is further alleged that the appointment of the workman from 1st June, 1983 to 31st October, 1983 was as a Helper in the Government canteen on daily wages as fixed by the Deputy Commissioner concerned. Copies of the orders are Exhibit WW-1 to WW-11.

4. On the pleadings of the parties, following issue was settled for decision by me on 17th December, 1984 :—

(1) whether the termination of services of Shri Ashok Kumar is justified and in order? If not, to what relief is he entitled?

5. Arguments heard. Documents perused. My findings on the issue framed are as below :—

6. The main contention of Shri Singla learned Authorised Representative of the respondent was that since the appointment of the workman on 1st June, 1983 was *denovo* appointment on the basis of application Exhibit WW-1 filed by him, the workman cannot take advantage of his previous service because he was re-employed after a gap of more than 2½ months. There is no dispute that the workman ceased to work with the respondent with effect from 14th March, 1983 and he was re-appointed on 1st June, 1983. On the other hand the learned Authorised Representative of the workman contended that the workman was a helpless person in the hands of the management which procured an application from him on 1st June, 1983, because the workman had no option. Otherwise the workman had put in more than 240 days of actual work with the respondent during the last 12 calendar months from the date of his termination. The calculation of days worked was made in the presence of both the learned Authorised Representatives of the parties. The

number of days comes to 263. I am inclined to go with the learned Authorised Representative for the workman that the application Ex. WW-1 was procured by the management from the workman, who willy-nilly wanted a job and earlier also the respondent had been adopting unfair labour practice in granting extension in employment to the workman in dribblets. So, there is no escape from the conclusion that since the workman had worked for more than 240 days with the respondent during the last calendar months from the date of his termination, the management was not justified in dispensing with his services without complying with the provisions of section 25F of the said Act and as such, the order of termination was void *ab initio* and not sustainable in the eyes of law. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 4th May, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No 159/84/772, dated the 11th May, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/4140.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Haryana Roadways, Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 189 of 1982

• between

SHRI RAJ KUMAR, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, SIRSA

Present :—

Shri S.S. Gupta, A.R. for the workman.

Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Raj Kumar and the management of M/s Haryana Roadways, Sirsa, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/HSR/54/82/43489, dated 16th September, 1982 :—

Whether the termination of service of Shri Raj Kumar was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was working as a Conductor with the Haryana Roadways and that his services were terminated on 31st March, 1982 after holding a farce of enquiry in which all the principles of natural justice were flouted by the Enquiry Officer and that the report of the Enquiry Officer is biased in favour of the workman and so, the order of termination based upon the same is liable to be set aside.

3. In the reply filed by the management, preliminary pleas taken are that the claim is not maintainable in the present form and the same is pre-mature as an appeal filed by the workman with the State Transport Controller, Haryana, Chandigarh, is still pending. On merits, it is asserted that the enquiry was held accordig to the prescribed procedure, in which the workman was given full opportunity of participation and so, the order of termination based upon the same is legal and justified.

4. On the pleadings of the parties, the following issues were settled for decision by me on 15th June, 1984 :—

(1) Whether the domestic enquiry conducted by the management is fair and proper ? OPR.

- (2) Whether the termination of service of Shri Raj Kumar was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Dharam Chand, Superintendent, Haryana Roadways, Sirsa, MW-2 Shri Balwinder Singh, Station Supervisor MW-3, Shri Prem Nath, Store Purchase Officer, Haryana Roadways, Jind, and MW-4 Shri S.K. Joshi, HCS, Regional Transport Authority, Hissar. The workman appeared as his own witness as WW-1.

6. The learned Authorised Representative of the parties heard. Documents perused. My findings on the issues framed are as below :—

Issue No. 1 :

7. The learned Authorised Representative of the respondent tried to sustain the enquiry report in view of the admission of the workman himself that on the day checking was made, he was allowing one passenger (though a relation) to travel without ticket and as such he contended that no umbrage can be taken against the findings of the Enquiry Officer. The contention though tempting is not tenable. There is no gain saying the fact that the workman admitted in his reply to the charge-sheet that he was allowing one passenger to travel without ticket, who was his uncle (Tau) but at the same time, the Enquiry Officer was duty bound to hold the enquiry according to the principles of natural justice and not lean in favour of the management. The fact that he was biased in favour of the management, is apparent from his own admission that he himself was cross examining the workman on behalf of the management. He further admitted that he led the witness Shri Balwinder Singh, Chief Inspector making a statement before him. The Enquiry Officer sits in the position of a Judge and he was not required to act as a prosecutor. In the present case Shri Prem Nath, Enquiry Officer was playing these twin roles which invites strongest disapproval from this Court. Besides these infirmities detailed above, the learned Authorised Representative of the workman, detailed many more of minor nature, but in my opinion, the aforesaid submission of the Learned Authorised Representative are sufficient to throw a serious doubt about the impartiality of the Enquiry Officer and as such, finding given by him cannot be sustained, though the workman might have admitted his guilt but this candour on the part of the workman should go in his favour rather than against him. It was a minor abhorration on the part of the workman, for which, he could be suitably dealt with departmentally, such as, he could be censured or at best his increment could be stopped. I cannot help observing, that in case, the domestic enquiry would have been found legal and valid, this Court would have been inclined to alter the punishment awarded to the workman, because the same is shockingly disproportionate to the admitted allegations against him.

8. In the light of my fore-going discussion, I find that the enquiry was not held according to the prescribed procedure and that the conduct of the Enquiry Officer was not above board, who was acting more as a Prosecutor than as an Enquiry Officer and as such, this issue is decided in favour of the workman.

9. I was inclined to afford an opportunity to the management to adduce evidence on merits regarding allegations against the workman, but the learned Authorised Representative of the workman rightly contended that since no such right was reserved by the Management, the Court suo-moto cannot grant any such opportunity. He made this submission on the basis of law laid down in 1985 (I) LLJ page 39 between Amar Nath and Swatantra Bharat Mills and another. Another authority on the point cited was 1979 (II) LLJ, 194 Shanker Chakarvarti and Britannia Biscuit Co. Ltd. In view of the law laid down in these two authorities, the management cannot be afforded any opportunity of adducing evidence on merits regarding the allegations against the workman.

Issue No. 2 :

10. Since preliminary issue regarding domestic enquiry has gone against the management, the second issue framed need not be decided.

11. In the light of my foregoing discussion, the order of termination based upon the enquiry, is vitiated by factual and procedural irregularities, cannot be sustained and as such the same is set aside and since the workman was prompt in raising an industrial dispute after his termination, he cannot be denied the benefit of back wages. So, the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 8th May, 1985.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 189/82/774, dated 11th May, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.